

REMARKS/ARGUMENTS

Applicants have studied the Office Action dated May 5, 2009 and have made amendments to the claims. It is submitted that the application, as amended, is in condition for allowance. By virtue of this amendment, claims 1-14, 16, 19-66, and 83-89 are pending. Claims 67-82 are withdrawn. Claims 15, 17, 18, and 19 have been cancelled without prejudice or disclaimer. Claims 1, 16, 19, 20, 39, and 66 are amended. Reconsideration and allowance of the pending claims in view of the above amendments and the following remarks is respectfully requested.

In the Office Action, the Examiner:

- (2-3) rejected claims 1-10, 12-16, 18, 20, 21, 23-25, 27, 31-35, 38, 66, 83, 85, and 87 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,237,996 to Waldman et al. (hereinafter "Waldman") in view of U.S. Patent No. 5,492,119 to Abrams (hereinafter "Abrams");
- (4) rejected claims 1, 5, 11, 15, 17, 19, 26, 36, 37, 39, 60, 84, 88, and 89 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,142,530 to Wittkamp (hereinafter "Wittkamp") in view of Abrams;
- (5) rejected claims 1, 22, 28-30, and 55-57 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,745,879 to King (hereinafter "King") in view of Abrams; and
- (6) rejected claims 39-54, 58, 59, 61-65, and 86 under 35 U.S.C. § 103(a) as being unpatentable over Waldman in view of Abrams and further in view of U.S. Patent No. 5,928,137 to Green (hereinafter "Green").

(2-3) Rejection under 35 U.S.C. §103(a) Waldman and Abrams

As noted above, the Examiner rejected claims 1-10, 12-16, 18, 20, 21, 23-25, 27, 31-35, 38, 66, 83, 85, and 87 under 35 U.S.C. § 103(a) as being unpatentable over Waldman in view of Abrams.

Cancelled claim 19 recited "The retractor according to claim 15, wherein said two

halves and a shim define said tracks.” The Examiner specifically omitted claim 19 from the list of claims recited in items 2 and 3 of the instant Office Action that are supposedly rendered obvious under 35 U.S.C. § 103(a) by Waldman in view of Abrams. Applicants submit that this omission of claim 19 is because Waldman, whether taken alone or in any combination with Abrams, neither shows nor suggests the shim feature of cancelled claim 19. The features of cancelled claim 19 are now present in currently amended claims 1 and 66. Specifically, independent claims 1 and 66 have been amended to recite, *inter alia*:

a head ... having:

a first tip half defining at least a first portion of a curved track;

a second tip half defining at least a second portion of a curved track; ...

flexible needles of a shape memory material ... disposed slidably within a respective one of said curved tracks; and

a shim disposed between the first tip half and the second tip half, the shim separating the flexible needles from each other while in the curved tracks, said two tip halves and said shim defining said curved tracks;

Support for the amendment can be found in cancelled claim 19 as well as, at least, on page 11, lines 22-24, and FIG. 2 of the specification of the instant application.

Because Waldman in view of Abrams does not teach, show, or suggest a shim and, in particular, do not teach, show, or suggest “a shim disposed between the first tip half and the second tip half, the shim separating the flexible needles from each other while in the curved tracks,” as recited in independent claims 1 and 66, claims 1 and 66 are believed to be patentable over Waldman in view of Abrams. The dependent claims are believed to be patentable as well because they all are ultimately dependent on either claim 1 or claim 66. Accordingly, the Examiner’s rejection of claims 1-10, 12-16, 18, 20, 21, 23-25, 27, 31-35, 38, 66, 83, 85, and 87 under 35 U.S.C. § 103(a) over Waldman in view of Abrams should be withdrawn.

(4) Rejection under 35 U.S.C. §103(a) Wittkamp and Abrams

As noted above, the Examiner rejected claims 1, 5, 11, 15, 17, 19, 26, 36, 37, 39, 60, 84, 88, and 89 under 35 U.S.C. § 103(a) as being unpatentable over Wittkampf in view of Abrams.

Cancelled claim 19 recited "The retractor according to claim 15, wherein said two halves and a shim define said tracks." The features of cancelled claim 19 are now present in currently amended claims 1 and 39. Specifically, independent claims 1 and 39 have been amended to recite, *inter alia*:

a head ... having:

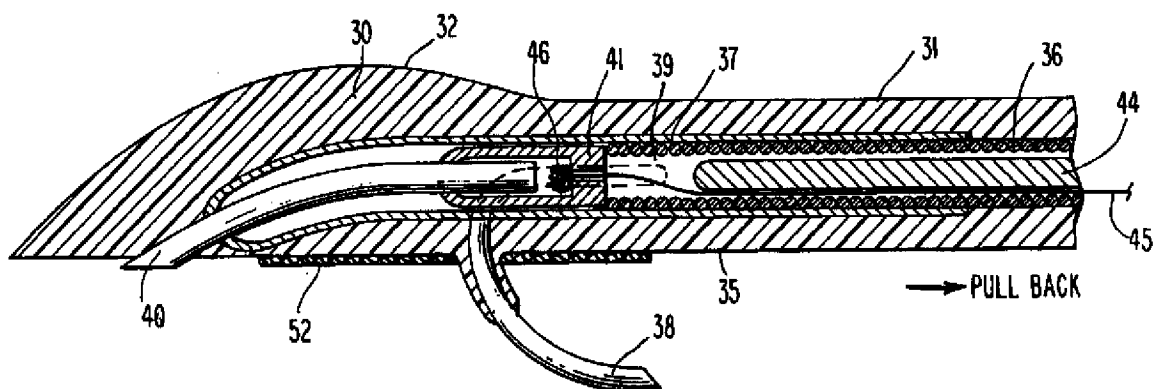
a first tip half defining at least a first portion of a curved track;

a second tip half defining at least a second portion of a curved track; ...

flexible needles of a shape memory material ... disposed slidably within a respective one of said set of curved tracks; and

a shim disposed between the first tip half and the second tip half, the shim separating the flexible needles from each other while in the curved tracks, said two tip halves and said shim defining said curved tracks;

In item 4 of the instant Office Action, the Examiner states that the limitations of claim 19 are found in a combination of Wittkampf and Abrams. Specifically, the Examiner points to element 52 of Wittkampf as the shim. Element 52 is shown in FIG. 2 of Wittkampf (reproduced below for the Examiner's convenience) and is present on/at an outer surface of the Wittkampf device.



Wittkamp's element 52 is described by Wittkamp as a "knitted Dacron mesh, ... which is attached to the bottom surface 35 around the electrode tips 38." Wittkamp, col. 4, lines 49-51. As will now be explained, Wittkamp's mesh 52 is not analogous to the presently claimed shim and the mesh 52 is clearly not "disposed between the first tip half and the second tip half [and] separating the flexible needles from each other while in the respective one of said curved tracks," as recited in claims 1 and 39.

First, it is readily apparent that the electrode tips 38 of Wittkamp are not "flexible needles of a shape memory material". Instead, the electrode tips 38 are necessarily of a **fixed** shape, i.e., the opposite of flexible! As Wittkamp explains, it is important for the electrode tips 38 to retain their curved shape. "The geometry of the contact tips is a very important feature...the tips are curvilinear...This geometry permits the pointed ends of the tips to be inserted into the epicardium ..." Wittkamp, col. 3, lines 23-33. "[W]hen electrode contact tips 38-1 and 38-2 are inserted into the heart muscle...there can be no rotational movement of the lead head." *Id.* at col. 4, lines 40-43.

Second, not only are the electrode tips 38 inflexible, they are also not "disposed slidably within ... curved tracks," as required by claims 1 and 39 of the instant application. Instead, the Wittkamp electrode tips 38 are defined as "anchors" that are fixed in place. Specifically, Wittkamp provides: "[t]he elements 38 are suitably welded to bushing 37". Wittkamp, FIG. 1 and col. 3, lines 12-13. Welding defines a fixed

connection. Therefore, the electrode tips 38 are clearly not “disposed **slidably** within a respective one of said set of curved tracks.”

Third, claims 1 and 39 recited a shim that is “disposed between the first tip half and the second tip half.” The mesh 52 is applied externally and is simply not disposed between any tip halves.

Because the **externally** located mesh 52 of Wittkampff could only be said to separate the two **fixed, non-flexible**, electrode tips 38-1 and 38-2 (See Wittkampff, at FIGS. 1 & 2), the external mesh 52 of Wittkampff simply cannot be accurately portrayed as a “shim [that is] disposed between [a] first tip half and [a] second tip half.” Nor can it be portrayed as “separating . . . flexible needles [that are disposed slidably within a ... curved track] from each other while in the curved tracks,” as recited in newly-amended claims 1 and 39. Therefore, contrary to the Office Action’s conclusion, the Wittkampff reference does not teach, show, or suggest “a shim disposed between the first tip half and the second tip half, the shim separating the flexible needles from each other while in the curved tracks, said two tip halves and said shim defining said curved tracks,” as recited in newly-amended claims 1 and 39.

The Abrams reference does not teach, show, or suggest a shim at all and, therefore, also cannot teach, show, or suggest the shim features recited in newly-amended claims 1 and 39.

Claims 1 and 39 are, therefore, believed to be patentable over Wittkampff in view of Abrams. The dependent claims are believed to be patentable as well because they all are ultimately dependent on either claim 1 or claim 39. Accordingly, the Examiner’s rejection of claims 1, 5, 11, 15, 17, 19, 26, 36, 37, 39, 60, 84, 88, and 89 under 35 U.S.C. § 103(a) over Wittkampff in view of Abrams should be withdrawn.

(5) Rejection under 35 U.S.C. §103(a) King and Abrams

As noted above, the Examiner rejected claims 1, 22, 28-30, and 55-57 under 35 U.S.C. § 103(a) as being unpatentable over King in view of Abrams.

Cancelled claim 19 recited: "The retractor according to claim 15, wherein said two halves and a shim define said tracks." The Examiner specifically omitted claim 19 from the list of claims recited in item 5 of the instant Office Action that are supposedly rendered obvious under 35 U.S.C. § 103(a) by King in view of Abrams. Applicants submit that this omission of claim 19 is because King, whether taken alone or in any combination with Abrams, neither shows nor suggests the shim feature of cancelled claim 19. The features of cancelled claim 19 are now present in currently amended claim 1. Specifically, independent claim 1 has been amended to recite, *inter alia*:

a head ... having:

a first tip half defining at least a portion of a set of curved tracks;

a second tip half defining at least a portion of a set of curved tracks; ...

flexible needles of a shape memory material ... disposed slidably within a respective one of said set of curved tracks; and

a shim disposed between the first tip half and the second tip half, the shim separating the flexible needles from each other while in the curved tracks;

Because King in view of Abrams does not teach, show, or suggest a shim and, in particular, do not teach, show, or suggest "a shim disposed between the first tip half and the second tip half, the shim separating the flexible needles from each other while in the curved tracks," as recited in independent claim 1, claim 1 is believed to be patentable over King in view of Abrams. The dependent claims are believed to be patentable as well because they all are ultimately dependent on claim 1. Accordingly, the Examiner's rejection of claims 1, 22, 28-30, and 55-57 under 35 U.S.C. § 103(a) over King in view of Abrams should be withdrawn.

(6) Rejection under 35 U.S.C. §103(a) Waldman, Abrams, and Green

As noted above, the Examiner rejected claims 39-54, 58, 59, 61-65, and 86 under 35 U.S.C. § 103(a) as being unpatentable over Waldman in view of Abrams and further in view of Green.

Cancelled claim 19 recited "The retractor according to claim 15, wherein said two halves and a shim define said tracks." The Examiner specifically omitted claim 19 from the list of claims recited in item 6 of the instant Office Action that are supposedly rendered obvious under 35 U.S.C. § 103(a) by Waldman in view of Abrams and Green.

Applicants submit that this omission of claim 19 is because Waldman, whether taken alone or in any combination with Abrams and/or Green, neither shows nor suggests the shim feature of cancelled claim 19. The features of cancelled claim 19 are now present in currently amended claim 39. Specifically, independent claim 39 has been amended to recite, *inter alia*:

a head ... having:

a first tip half defining at least a first portion of a curved track;

a second tip half defining at least a second portion of a curved track; ...

flexible needles of a shape memory material ... disposed slidably within a respective one of said curved tracks; and

a shim disposed between the first tip half and the second tip half, the shim separating the flexible needles from each other while in the curved tracks, said two tip halves and said shim defining said curved tracks;

Because Waldman in view of Abrams and/or Green does not teach, show, or suggest a shim and, in particular, do not teach, show, or suggest "a shim disposed between the first tip half and the second tip half, the shim separating the flexible needles from each other while in the curved tracks, said two tip halves and said shim defining said curved tracks" as recited in independent claim 39, claim 39 is believed to be patentable over Waldman in view of Abrams and/or Green. The dependent claims are believed to be patentable as well because they all are ultimately dependent on claim 39. Accordingly, the Examiner's rejection of claims 39-54, 58, 59, 61-65, and 86 under 35 U.S.C. §

103(a) over Waldman in view of Abrams and/or Green should be withdrawn.

CONCLUSION

The remaining cited references have been reviewed and are not believed to affect the patentability of the claims as amended.

In this Response, Applicants have amended certain claims. In light of the Office Action, Applicants believe these amendments serve a useful clarification purpose, and are desirable for clarification purposes, independent of patentability. Accordingly, Applicants respectfully submit that the claim amendments do not limit the range of any permissible equivalents.

Applicants acknowledge the continuing duty of candor and good faith to disclosure of information known to be material to the examination of this application. In accordance with 37 CFR §1.56, all such information is dutifully made of record. The foreseeable equivalents of any territory surrendered by amendment are limited to the territory taught by the information of record. No other territory afforded by the doctrine of equivalents is knowingly surrendered and everything else is unforeseeable at the time of this amendment by the Applicants and their attorneys.

Applicants respectfully submit that all of the grounds for rejection stated in the Examiner's Office Action have been overcome, and that all claims in the application are allowable. No new matter has been added. It is believed that the application is now in condition for allowance, which allowance is respectfully requested.

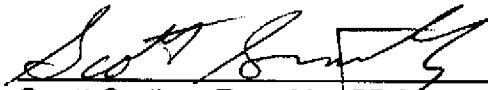
Petition for extension is herewith made. The extension fee for response within a period of two (2) months pursuant to Section 1.136(a) in the amount of \$490.00 in accordance with Section 1.17 is enclosed herewith.

PLEASE CALL the undersigned if that would expedite the prosecution of this application.

Respectfully submitted,

Date: October 5, 2009

By:


Scott Smiley, Reg. No. 55,627
Attorney for Applicants

Mayback & Hoffman, P.A.
5722 S. Flamingo Rd.
Suite 232
Fort Lauderdale, FL 33330
Tel (954) 704-1599
Fax (954) 704-1588